

REMARKS

Reconsideration and entry of these remarks are respectfully requested. Claims 1-23 remain pending.

Box 10 of the Office Action Summary indicated that there is a problem with the drawings. The Examiner was contacted and he indicated that Box 10 was inadvertently marked and stated that the drawings change filed on October 13, 2004 was acceptable.

Claims 1-7, 9-19 and 21-23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Feliz in view of Williams et al. This rejection is respectfully traversed.

In response to Applicant's previous arguments regarding the claims requiring non-powered wheel structure, the Examiner stated that Williams et al. was cited for teaching non-powered wheels and that it would have been obvious to use wheels of Williams et al. in the apparatus of Feliz. However, Feliz requires that his wheels 4 be powered to for highway travel (see column 8, lines 29-32 and lines 62-65) and modifying these wheels to be non-powered, as suggested by the Examiner, would destroy the invention of Feliz and would therefore be improper. See Ex parte Hartman, 186 U.S.P.Q. 336, 337 (P.T.O.B.O.A. 1974) (reversing rejection when modification would destroy basis for invention in one or two references). Therefore, the rejection is improper and should be withdrawn.

The Examiner maintains that the universal tow bar 316 of Felix could be used to tow the apparatus when the wheels of Williams et al. were in the operative position. Applicant disagrees. First, the claims require a hitch structure, carried by the body, constructed and arranged to be coupled to a vehicle so that the apparatus can be towed by the vehicle when the wheel structure is in the operative position thereof. The tow bar 316 is not constructed and arranged to be coupled to a second vehicle. Furthermore, as indicated at column 17, lines 10-38, the tow bar 316 merely compensates for telescopic travel, terrain undulations and stacking of conveyers for highway travel (e.g., when the apparatus of Feliz is moved via powered wheels 4). A tow bar is simply not a hitch and is not capable of being connected for towing of the entire apparatus of Feliz.

In fact, neither Felix nor Williams et al. teaches or suggests that his vehicle should have a hitch to be towed by second vehicle to another location. Feliz's apparatus is moved by powered wheels 4 for highway travel, and in Williams et al., the vehicle is moved bodily sideways by driven wheels 51 upon moving latch lever 63. "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In re Fritch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). "Teachings of references can be combined only if there is some suggestion or incentive to do so." In re Fine, 5 USPQ2d 1596,1600 (Fed. Cir. 1988) (quoting ACS Hosp. Sys. v. Montefiore Hosp., 221 USPQ 929, 933 (Fed. Cir. 1984)) (emphasis in original). There is simply no suggestion in the prior art of record of towing Feliz apparatus. Therefore, the rejection is improper.

With regard to claims 9 and 21, Applicant maintains that there is no teaching or suggestion in Feliz of a dump truck as the source of aggregate material. Feliz does not teach or suggest that the vehicle includes rollers "constructed and arranged to engage tires of the dump truck". In no way are rollers 417 or 422 of Feliz constructed and arranged to engage tires of a dump truck. These rollers 417 and 422 are ground-engaging rollers.

With regard to claims 12 and 23, The Examiner has yet to show where the prior art of record teaches or suggests a lift jack constructed and arranged to lift a portion of the body with respect to the ground to enable the hitch structure to be in a position to be coupled with a vehicle for towing of the apparatus. The Examiner has continued to ignore these claim limitations. As noted above, the vehicle of Feliz is not intended to be towed and since the tow bar 316 is not a hitch, there is no need to lift the body of Feliz's apparatus for the tow bar to be in a certain position for towing.

For these reasons, claims 1 and 13 and the claims that depend there-from are considered to be allowable over the prior art of record.

Claims 8 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Feliz and Williams and further in view of Vangaever. These claims depend from independent claims 1 and 13, respectively, and are considered to be allowable for the

reasons advanced above, and for the additional reason that the added subject matter is not taught or suggested by the prior art of record.

All objections and rejections having been addressed, it is respectfully submitted that this application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Stemberger', written in a cursive style.

Edward J. Stemberger
Registration No. 36,017
Phone: 202.261.1014

Customer No. 20736